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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,146	09/09/2003	Jiping Wang	9024M	5397

27752 7590 03/08/2005

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

BOYER, CHARLES I

ART UNIT PAPER NUMBER

1751

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,146

Applicant(s)

WANG ET AL

Examiner

Charles I. Boyer

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/1/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

This application claims priority to US Application 10/375,792 on page 1 of the specification, however the disclosure of this application and the priority application are dissimilar. This priority claim with respect to the application cited above is believed to be an error.

Double Patenting

1. Claims 1, 2, 4-11, 13, 14, 17, and 18 of this application conflict with claims 1, 2, 4-10, 13, 15, 16, 19, and 20 of Application No. 10/658,090. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Before citing the references against the present claims, the examiner would like to state for the record that due to the inordinate breadth of the present claims, requiring only a composition containing a "benefit agent" and a "delivery enhancing agent", the examiner maintains that a thorough search is impossible. These terms, without further definition or explanation in the claims, could be just about anything. For example, a fabric softener with a solvent, hydrotrope or surfactant, would satisfy at least the limitations set forth in claim 1. There are potentially an infinite number of combinations of components that would satisfy claim 1. Accordingly, the examiner has taken into consideration the preferred specific components of the present invention, in order to identify the closest prior art, which art is cited below. Applicants should be aware however, that there are many other references that could have been cited against the present invention. Any response from applicants to the references cited below that does not also address the fact that their claims are extremely broadly written, together with a clear statement of what applicants consider to be the novelty of their invention, would likely not be successful in rendering those claims allowable.

3. Claims 1-7, 9-15, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fowler et al, US 5,534,265.

Fowler et al teach thickened, personal cleansing compositions comprising 4% polyethylene particles having a particle size of 25 microns, 0.2% polyquaternium-10, and 4.56% surfactant (col. 22, example 5). As this reference meets all material limitations of the claims at hand, the reference is anticipatory. With respect to the present claims being drawn to laundry products, the examiner maintains this is merely the ultimate intended use of the composition. If the present claims are deemed patentable, applicants could use the present composition for any purpose, not just as a laundry product. It is well established that the mere recital of a different intended use in a claim does not distinguish the claim over a composition containing the same ingredients in the same proportions for a different purpose in the prior art. See *In re Zierden*, 162 USPQ 102 (CCPA 1969).

4. Claims 1, 3-7, 9-15, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobs et al, US 5,939,085.

Jacobs et al teach skin smoothing compositions comprising 11% polyethylene particles, 0.3% polyquaternium-10, and 32% surfactant (col. 22, example 5). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

5. Claims 1, 3-14, 16, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaiser et al, US 5,919,440.

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Kaiser et al teach personal cleansing compositions comprising 4% butylacrylate/ethylhexyl methacrylate, 0.3% polyquaternium-10, 17.6% surfactant, and 0.3% phosphate builders (col. 14, example IX). Another example comprises 0.3% dimethicone, 0.3% polyquaternium-10, 14.4% surfactant, and 0.3% phosphate builders (col. 14, example X). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

6. Claims 1-7, 9-14, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Snyder et al, US 6,268,431.

Snyder et al teach hair styling shampoos comprising 3% latex polymer, 0.4% polyquaternium-10, 14.7% surfactants, and 0.25% polybutene (col. 13, example VII). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

7. Claims 1, 3-7, 9-14, 16, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Sisco et al, US 4,969,925.

Sisco et al teach soap bars comprising 0.4% butylacrylate/methacrylic acid, 1% LM-200, and soap (col. 8, test 4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

8. Claims 1, 2, 4-7, 9-11, 13, 14, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Yeoh et al, US 6,200,554.

Yeoh et al teach conditioning shampoo compositions comprising 0.5% polyquaternium-10, 1.5% dimethicone having a particle size from 30 to 40 microns, and 16% surfactants (col. 20, example XVI). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

9. Claims 1, 2, 4-7, 9-11, 13, 14, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Coffindaffer et al, US 5,932,203.

Coffindaffer et al teach conditioning shampoo compositions comprising 0.2% polyquaternium-10, 2% dimethicone having a particle size from 5 to 25 microns, and 21.45% surfactants (col. 20, example I). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

10. Claims 1-17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Guskey et al, US 6,040,282.

Guskey et al teach styling shampoo compositions comprising 4% butylacrylate/ethylhexyl methacrylate, 0.15% polyquaternium-10, 0.25% dimethicone, 19% surfactants, and 1% citric acid builder (col. 32, example V). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

11. Claims 1, 2, 4-11, 13, 14, and 17-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Bettiol et al, US 6,440,911.


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Bettiol et al teach enzymatic shampoo compositions comprising 0.2% polyquaternium-10, 2% dimethicone, 18.6% surfactants, 1% citrate builder, amylase and mannanase (col. 68, example 31V). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-F 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571 272 1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Charles I Boyer
Primary Examiner
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